

BARNES & THORNBURG LLP

Jerimi J. Ullom
(317) 231-7739
Email: jerimi.ullom@btlaw.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2007 OCT -4 A 9:50

11 South Meridian Street
Indianapolis, IN 46204-3535 U.S.A.
(317) 236-1313
Fax (317) 231-7433

www.htlaw.com

October 3, 2007

Via Federal Express

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463
Attn: Jeff. S. Jordan, Supervisory Attorney

RE: MUR 5938

We represent each of *The Indianapolis Recorder* and the Honorable Carolene Mays in connection with MUR 5938 consisting of a complaint filed by Mr. Pierre Quincy Pullins alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Statements of Designation of Counsel are enclosed herewith. The Complaint appears to have been filed by Mr. Pullins with the Commission on September 4, 2007. *The Indianapolis Recorder* received notice of the complaint from the Commission on September 19, 2007 and Ms. Mays received notice of the complaint from the Commission on September 24, 2007. Thus, this response is being filed timely pursuant to 11 CFR 111.6(a).

Introduction

At the outset we note for the benefit of the Commission that Mr. Pullins was an unsuccessful candidate in the primary election to which his complaint relates. In fact, Mr. Pullins finished fifth among five candidates; his tally of 309 votes was more than 29,000 votes behind the winner, incumbent U.S. Representative Julia Carson. Since his loss in the primary, Mr. Pullins has, among other things, sued *The Indianapolis Recorder* for defamation claiming to have been defamed by its pre-election coverage of the Democratic congressional primary. *The Indianapolis Recorder* is defending Mr. Pullins' suit and believes it to be completely without merit. Similarly, for the reasons set forth below, our clients believe MUR 5938 to be yet another frivolous claim by Mr. Pullins.

On its face, MUR 5938 is less than clear in its allegations. Nor is it clear whom Mr. Pullins alleges has violated the Act. In any event, the facts as set forth herein and in the exhibits attached hereto clearly demonstrate that neither *The Indianapolis Recorder* nor Ms. Mays has committed any violation of the Act.

Background

Mr. Pullins' complaint relates to an advertisement which appeared in *The Indianapolis Recorder* on April 28, 2006. A print-copy of the advertisement is attached hereto as Appendix 1 to Exhibit A. Among other things, the advertisement encouraged voters to support and endorse U.S. Representative Julia Carson in the then-upcoming primary election. Ms. Carson eventually defeated four challengers (including Mr. Pullins) in the primary.

As set forth in Exhibit A, Concerned Clergy, Inc., an Indiana nonprofit corporation, paid for the advertisement. Copies of the paid invoice for the advertisement, and the check by which Concerned Clergy, Inc. paid for the ad, are attached as appendices 2 and 3 to Exhibit A. Moreover, as set forth in Exhibit A, *The Indianapolis Recorder* charged Concerned Clergy, Inc. its usual and customary rate for comparable use of such space for other purposes. Given the ad was paid for solely by Concerned Clergy, Inc. at *The Indianapolis Recorder's* customary rate, there can be no conclusion that *The Indianapolis Recorder* or Ms. Mays subsidized the advertisement or made any sort of in-kind contribution to the advertisement's sponsor.

Mr. Pullins' Allegations

Parsing Mr. Pullins' complaint, we identify six statements which he claims show the advertisement "violates the BCRA of 2002" and the "FE.C.A of 1971."

1. Mr. Pullins states "the ad does not identify who paid for it."
2. He hypothesizes that "[t]he ad appears to be coordinated with candidates [sic] campaigns."
3. He expresses his belief that "this ad was an in-kind contribution to the Carson campaign and others."
4. He expresses his belief that "it was coordinated with the goals of the Marion County Democratic Party."
5. He expresses his belief that "Democratic State Representative Carolene Mays paid for the ad."
6. Finally, he expresses his belief that "owner William G. Mays sanctioned this ad to be run." William G. Mays is in fact the owner of *The Indianapolis Recorder*.

For the reasons set forth below and affirmed by various parties in the exhibits attached hereto, none of Mr. Pullins' allegations constitute violations of the Act by either of *The Indianapolis Recorder* or Ms. Mays. Mr. Pullins' complaint should be immediately dismissed with respect to *The Indianapolis Recorder* and Ms. Mays.

1. The Ad Does Not Identify Who Paid For It.

While the advertisement fails to include any of the disclaimers required by 2 U.S.C. § 441d, such failure does not constitute any violation of the Act by either *The Indianapolis Recorder* or Ms. Mays. As the Commission is aware, the party with responsibility for a communication under the Act (and therefore with the obligation to include the required disclaimers) is the one which pays the cost of the communication. As set forth above, the advertisement was paid for solely by Concerned Clergy, Inc.

2. The Ad Appears to be Coordinated with Candidates Campaigns.

First, we note that coordinated efforts with a candidate or campaign are not, in themselves, prohibited by the Act. Rather, the issue of coordination bears on whether any particular action is deemed to be an "independent expenditure" rather than an "in-kind contribution" under the Act. As affirmed under penalties for perjury in the exhibits attached hereto, neither *The Indianapolis Recorder* nor Ms. Mays engaged in any coordination related to the advertisement with any candidate or campaign.

3. This Ad Was an In-Kind Contribution to the Carson Campaign.

Again, we note that the Act does not prohibit in-kind contributions and that the characterization of any communication such as the advertisement as an "in-kind contribution" rather than an "independent expenditure" turns on whether the advertisement was coordinated with any candidate or committee. Further, Mr. Pullins' complaint does not state by whom he believes an in-kind contribution was made.

As set forth above, the advertisement was paid for by Concerned Clergy, Inc., an Indiana nonprofit corporation, not by either of *The Indianapolis Recorder* or Ms. Mays. Moreover, neither *The Indianapolis Recorder* nor Ms. Mays engaged in any coordination related to the advertisement with any candidate or committee.

4. The Ad Was Coordinated with the Goals of the Marion County Democratic Party.

We are not certain precisely what Mr. Pullins' point is here or precisely how, if true, this statement might allegedly violate the Act. However, for purposes of any allegations made against *The Indianapolis Recorder* and/or Ms. Mays, the allegation is misplaced. As set forth above, the advertisement was paid for by Concerned Clergy, Inc., an Indiana nonprofit corporation, not by either of *The Indianapolis Recorder* or Ms. Mays. Moreover, neither *The Indianapolis Recorder* nor Ms. Mays engaged in any coordination related to the advertisement with any candidate or committee.

5. Democratic State Representative Carolene Mays Paid for the Ad.

This statement by Mr. Pullins is simply not accurate. As set forth above, the advertisement was paid for by Concerned Clergy, Inc., an Indiana nonprofit corporation.


6. Owner William G. Mays Sanctioned This Ad to be Run.

Again, we are not certain how such an allegation might violate the Act nor are we certain what Mr. Pullins' means by "sanctioned." However, as set forth above and in the affidavit of William G. Mays attached hereto as Exhibit B, Mr. Mays did not coordinate the advertisement with any candidate, campaign or committee.

The Complaint Should be Dismissed.

In conclusion, the complaint lodged by Mr. Pullins does not allege sufficient facts to support any conclusion that either *The Indianapolis Recorder* or Ms. Mays has violated the Act. The complaint does not warrant the expenditure of additional Commission resources and should therefore be immediately dismissed.

Thank you for your consideration.


Jerimi J. Ullom

Enclosures

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OFFICE OF GENERAL
COUNSEL

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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client.
FAX (202) 219-3923

MUR# 5938

NAME OF COUNSEL: Jerimi J. Ullom

FIRM: Barnes & Thornburg LLP

ADDRESS: 11 South Meridian Street

Indianapolis, IN 46204

TELEPHONE- OFFICE (317) 231-7739

FAX (317) 231-7433

The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

10-1-07
Date

William H. May Chairman
Respondent/ Client Signature Title

RESPONDENT/CLIENT The Indianapolis Recorder
(Please Print)

MAILING
ADDRESS: 2901 North Tacoma Avenue, P.O. Box 18499

Indianapolis, IN 46218-0499

TELEPHONE- HOME () _____

BUSINESS (317) 924-5143

Information is being sought as part of an investigation being conducted by the Federal Election
Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section
prohibits making public any investigation conducted by the Federal Election Commission without
the express written consent of the person under investigation

Rev. 2006

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OFFICE OF GENERAL
COUNSEL



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

2007 OCT -4 A 9:5

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client
FAX (202) 219-9923

MUR # 5938

NAME OF COUNSEL: Jerimi J. Ullom

FIRM: Barnes & Thornburg LLP

ADDRESS: 11 South Meridian Street

Indianapolis, IN 46204

TELEPHONE- OFFICE (317) 231-7739

FAX (317) 231-7433

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/30/07
Date

Carolene Mays
Respondent/ Client Signature

State Representative and
Title Publicist

RESPONDENT/CLIENT The Honorable Carolene Mays
(Please Print)

MAILING ADDRESS:

Indianapolis, IN 46218

TELEPHONE- HOME ()

BUSINESS (317) 924-5143

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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EXHIBIT A

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MUR 5938

4. I am personally familiar with Concerned Clergy, Inc., a non-profit fellowship of pastors and other citizens known in the Indianapolis community for advocacy in the pursuit of social justice and to combat racism in economic, political, legal, and educational systems.

1

:

Concerned Clergy, Inc. regularly encourages voter participation and provides information of interest to persons seeking to make an informed exercise of their right to vote.

5. The advertisement prominently reflects the sponsorship and endorsement of Concerned Clergy, Inc., referring to the group by name five times throughout the text of the advertisement. The advertisement was paid for solely by Concerned Clergy, Inc. Attached as Appendix 2 is a true and correct copy of THE INDIANAPOLIS RECORDER Invoice #105555, in the amount of \$2,079.00 dated April 24, 2006 and billed to Concerned Clergy, Inc. for the advertisement. The amount billed to Concerned Clergy, Inc., for the advertisement represents the customary rate charged by THE INDIANAPOLIS RECORDER for national advertising, which is the rate charged for all political advertisements.

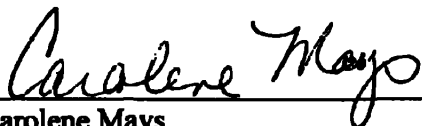
6. Appendix 3 is a true and correct copy of Concerned Clergy, Inc.'s check #1424 dated April 24, 2006 in the amount of \$2,079.00 for Invoice #105555. The memo line refers to "political ad."

7. Neither I, nor, to my knowledge, anyone else associated with THE INDIANAPOLIS RECORDER engaged in any coordination of the advertisement with any candidate, campaign or committee. To my knowledge, the advertisement was not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, any candidate's authorized committee, or their agents, or any political party committee or its agents

8. I did not pay for any portion of the cost of the advertisement.

I declare under the penalties for perjury that the foregoing facts are true.

Executed on: October 1, 2007


Carolene Mays

APPENDIX 1

28044190438

CONCERNED CLERGY, INC.

P.O. Box 18215

Indianapolis, Indiana 46218

317-542-9244

317-546-8597 (fax)

**GET BUSY,
GET INVOLVED
AND VOTE!!!**

The May 2nd Primary Election is just days away, and the Concerned Clergy, Inc. urges all Marion County registered voters to

“Get Busy, Get Involved and Vote!.”

As you make your way to the polls remember to take your photo ID with you. Should you Encounter any problems, with voting, please ask to vote by **provisional ballot**. May 2, 2006 is also your opportunity to vote for school board candidates. The Concerned Clergy supports and endorses **Olgen Williams for IPS School Board Candidate At-Large**. Olgen is the father of ten children, the Executive Director of Christamore House, and has years of experience in those issues that confront our youth daily. **IPS needs Olgen Williams, our students need Olgen Williams, so remember his name as you select your school board candidates.**

The May 2nd Primary Election also give the voters of the 7th Congressional District the opportunity to send

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US Congress where she has done an outstanding job, of representing we the people. **Julia**, a true public servant who is committed, compassionate, intelligent and experienced. The Concerned Clergy encourages you to support and endorse our **Julia!!**

May 2, 2006 presents many opportunities for **Marion County Voters (we the people)**, to vote for political candidates and those included selecting our Superior Court Judges, County and Township Offices. We ask that you remember to vote for the Democrat Slate of Superior Court Judge Candidates, such as Judge Linda Brown, Judge Grant Hawkins, Judge Barbara Collins, Judge Becky Pierson- Tracey, Jose Salinas and Heather Welch. On the County level remember the names of Billie Breaux for County Auditor, Greg Bowes for County Assessor, Beth White for County Clerk, Julie Voorhies for County Recorder, **Melina Kennedy for Prosecutor and Frank Anderson for Sheriff.**

On the Township level, please remember the Democratic candidates in Center Township, Kimberly Brown for Washington Township Small Claims Court Judge, Maxine King for Wayne Township Small Claims Court Judge, Paul Woods for Wayne Township Constable, and all other Township office candidates.

Marion County Voters, again the Concerned Clergy Inc. urges you to

**Get Busy, Get Involved and Vote
on**

May 2, 2006!!!

P.S. To our Republican friends and voters, we ask that you remember the name Ron Franklin, the Republican Slated Candidate for the

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APPENDIX 2

28044190441

INDIANAPOLIS RECORDER

2901 N. Tacoma Avenue
Indianapolis, IN 46218
(317) 924-5143

INVOICE

| DATE | INVOICE # |
|-----------|-----------|
| 4/24/2006 | 1 |

BILL TO

CONCERNED CLERGY, INC
3801 FOREST MANOR
INDIANAPOLIS, IN 46226

| FED. ID# | P.O. NO. | TERMS | DUE DATE | REP | ISSUE DATE |
|----------|----------|-------------|----------|-----|------------|
| | | NET 10 DAYS | 5/4/2006 | 005 | 4/28/2006 |

| ITEM | DESCRIPTION | QTY | UNIT PRICE | AMOUNT |
|------|---|-----|------------|----------|
| A060 | POLITICAL ADVERTISING ID: GET INTO IT GET INVOLVED | 63 | 33.00 | 2,079.00 |

PAID CHECK# 1424

ONE TEARSHEET SENT

TOTAL \$2079.00

MAKE CHECK PAYABLE TO: THE INDIANAPOLIS
RECORDER. PLEASE RETURN A COPY OF THE
INVOICE WITH PAYMENT. THANK YOU FOR YOUR
SUPPORT.

28044190442

APPENDIX 3

28044190443

EXHIBIT B

28044190445

FEDERAL ELECTION COMMISSION

***In Re:* COMPLAINT)
OF PIERRE QUINCY PULLINS)**

MUR 5938

VERIFIED DECLARATION OF WILLIAM G. MAYS

William G. Mays declares under the penalties of perjury that:

1. I am an adult citizen of Marion County, State of Indiana, and make these statements on my personal knowledge. I am competent to testify to the following facts if called upon to do so.

2. I am the chairman, owner, and registered agent of The George P. Stewart Publishing Company d/b/a THE INDIANAPOLIS RECORDER, a weekly newspaper of general circulation published since 1895 in Indianapolis, Indiana.

3. I have reviewed the allegations in the complaint filed by Pierre Quincy Pullins about the Concerned Clergy, Inc.'s advertisement published in the April 28, 2006 edition of THE INDIANAPOLIS RECORDER.

4. I did not engage in any coordination of the advertisement with any candidate, campaign or committee and, to my knowledge, the advertisement was not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, any candidate's authorized committee, or their agents, or any political party committee or its agents.

5. I did not pay for any portion of the advertisement.

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I declare under the penalties for perjury that the foregoing facts are true.

Executed on: October 1st, 2007

William G. Mays
William G. Mays

28044190447